

51



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/488,182	01/20/2000	Eric Jonathan Bauer	13-7-4	4052
7590 08/06/2004				
KEVIN M. MASON RYAN, MASON & LEWIS, LLP 1300 POST ROAD SUITE 205 FAIRFIELD, CT 06430			EXAMINER ABELSON, RONALD B	
			ART UNIT 2666	PAPER NUMBER 13
DATE MAILED: 08/06/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.



UNITED STATES PATENT AND TRADEMARK OFFICE

---

COMMISSIONER FOR PATENTS  
UNITED STATES PATENT AND TRADEMARK OFFICE  
P.O. Box 1450  
ALEXANDRIA, VA 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

**MAILED**  
AUG 06 2004  
**Technology Center 2600**

**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/488,182  
Filing Date: January 20, 2000  
Appellant(s): BAUER ET AL.

---

Kevin Mason  
For Appellant

**EXAMINER'S ANSWER**

1. This is in response to the appeal brief filed 5/17/2004.

2. A statement identifying the real party in interest is contained in the brief.
3. A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.
4. The statement of the status of the claims contained in the brief is correct.
5. The appellant's statement of the status of amendments after final rejection contained in the brief is correct.
6. The summary of invention contained in the brief is correct.
7. The appellant's statement of the issues in the brief is correct.
8. Appellant's brief includes a statement that the rejected claims stand and fall together.

Art Unit: 2666

9. The copy of the appealed claims contained in the Appendix to the brief is correct.

6389005	Cruickshank	5-2002
6006259	Adelman et al.	12-1999

10. Claims 1,4,7, and 10 rejected under 35 U.S.C. 102(e). This rejection is set forth in a prior Office Action, mailed on 9/26/2003.

Claims 2,5,8, and 11 rejected under 35 U.S.C. 103(a). This rejection is set forth in a prior Office Action, mailed on 9/26/2003.

#### ***Response to Argument***

11. The applicant argues that Cruickshank monitors QoS parameters such as packet delay, packets dropped and throughput; Cruickshank does not address monitoring congestion (applicant: pg. 3 lines 24-25). The examiner disagrees. The examiner maintains that by monitoring parameters such as packet delay, packets dropped and throughput, Cruickshank is inherently monitoring congestion.

Art Unit: 2666

The applicant argues that there is a difference between monitoring the QoS parameters taught by Cruickshank and the monitoring of congestion, as required by the present invention (applicant: pg. 3 lines 26-28). However, the applicant teaches monitoring packet loss and packet delay in order to set the congestion indicator flag (spec: pg. 8 lines 9-14). Therefore, both Cruickshank and the applicant are monitoring packets dropped/loss and throughput/delay in order to determine if congestion exists in the network.

The applicant argues (pg. 4 line 23 - pg. 5 line 5) that Cruickshank supports the argument that the monitoring of QoS parameters taught by Cruickshank and the monitoring of congestion are different since Cruickshank teaches the delays are assumed due to congestion (Cruickshank: col. 2 lines 46-49). The examiner disagrees. As stated previously, both Cruickshank and the applicant are monitoring the same parameters to determine if the network is congested.

The applicant argues that Cruickshank does not teach a congestion indicator (applicant: pg. 5 lines 13-14). As mentioned in the prior office action, Cruickshank does teach a congestion status indicator (Cruickshank: fig. 3b box 134, col. 2 lines 32-36). Cruickshank teaches the congestion indicator is the QoS. This is determined by measuring packet delay, packets

Art Unit: 2666

dropped, and throughput. As previously stated, the applicant also determines congestion by monitoring packets dropped/loss and throughput/delay.

The applicant further argues that Cruickshank does not teach congestion data (applicant: pg. 5 lines 13-14). As mentioned in the prior office action, Cruickshank does teach congestion data (fig. 3B box 136 "Y"). Note, in Cruickshank, if the congestion data indicates the path is congested, the flag is set to "Y" and the call is routed through the PSTN.

12. For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Ronald Abelson


Examiner


Art Unit 2666

\*\*\*

July 30, 2004

Conferees

Douglas Olms, SPE 2661 

Frank Duong, Primary Examiner 2666 

KEVIN M. MASON

RYAN, MASON & LEWIS, LLP

1300 POST ROAD

SUITE 205

FAIRFIELD, CT 06430